

A Comparison between the *Ley General para la Inclusión de las Personas con Discapacidad* and the Americans with Disabilities Act

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Abstract

The purpose of this study is to understand more about the currently enacted *Ley General para la Inclusión de las Personas con Discapacidad* (General Law for the Inclusion of People with Disabilities) in Mexico and compare it to the Americans with Disabilities Act (ADA) in the United States. There is a difference in historical events that occurred in each country that lead to the passing of each law. The understanding of the Mexican disability background is helpful for disability advocates and anyone in this field to be able to understand where Mexican citizens with disabilities are coming from when they seek services in the United States. Due to the Mexican law being passed in May 2011 there is not enough information that provides criticism to the effectiveness of the law and how it has impacted its citizens.

Resumen

El propósito de este estudio es para entender más sobre la reciente ley Mexicana aprobada nombrada Ley General para la Inclusión de las Personas con Discapacidad y compararla con la ley para las personas con discapacidades de Estados Unidos (*The Americans with Disabilities Act-ADA*). Al comprender la historia sobre discapacidad en México, los defensores sobre este tema y cualquier persona en el campo de rehabilitación serán capaces de entender los antecedentes de los mexicanos con discapacidades cuando soliciten servicios en Estados Unidos. Debido a que la ley mexicana fue aprobada en mayo del 2011, no hay suficiente información que proporcione críticas sobre el funcionamiento e impacto de esta ley en los ciudadanos mexicanos.

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Introduction

As the population of Hispanic (Mexican) grows in the U.S. it is arguable that the number of people with disabilities should also grow. As they become citizens they may require services from the State Federal VR programs. It may be wise for the vocational rehabilitation counselors of the state/federal VR systems to have a better understanding of the history of the disability legislation of the new citizens from south of the U.S. Mexico Border. It can further be argued that an understanding of the legislation, culture and history the state/federal VR system may enhance the successful outcome for this population. The focus of this paper is to discuss the events in Mexico and the United States which lead up to the major legislation of each country and compare the two. For Mexico the legislation is *Ley General para la Inclusión de las Personas con Discapacidad* [General Law for the Inclusion of People with Disabilities] and for the United States it is the Americans with Disabilities Act.

Historical Background of Disability and Legislation

Arguably disability has been present since the beginning of human life. Mexico and the United States had different perspectives of disability which influenced on to the creation of laws protecting this population. Also, historical event in each country's history that influenced the laws that both countries currently have.

México in the 1500s

Disability issues in México date back to the Colonial years (1521) where religious institutions were in charge of providing services and protection to individuals with any medical or monetary needs (INEGI, 2004). As stated by INEGI (2004), in 1566 Fray Bernardino Alvarez Herrera

founded the *Hospital San Hipolito* in México City. This was the first hospital in the continent dedicated to the treatment of people with mental disabilities.

México in the 1800s

During the Reform era in México (1857-1861), the church's resources including its charitable institutions were taken by the state as well as a series of responsibilities that traditionally had been carried out by the church. By this, the original concept of charity changed to an idea of solidarity and support from institutions from the government sustained by the necessity of establishing a coherent organization to ensure help to the population in the country (Fuentes, 1998). In 1851 president Benito Juárez ordered the establishment of a school for individuals with hearing impairments in Mexico City (Fuentes, 1998). Later in 1870, Ignacio Trigueros inaugurated the School for the Blind in the Convent of Our Lady del Pilar. These two schools are considered the origin of special education in México (INEGI, 2004). In 1881, the improper operation of care centers largely driven by the lack of administrative continuity forced to make changes in its structure. Charity centers that were under the responsibility of local councils passed to be part of the Department of Public Charity by the Ministry of Interior. Among the established hospitals under this department were the *Hospital de Dementes* and the *Hospital de Mujeres Dementes* (INEGI, 2004). Despite efforts for the state to be sole provider of services and assistance to people with disabilities, during the Porfiriato era (1877-1911) private organizations emerged and increased and assisted in the care for the "needy". Included in the definition of "needy" were people with disabilities (Fuentes, 1998).

México in the 1900s

During the next century the focus was taken away from helping the "needy" into ensuring financial security of workers who obtained disabilities. In 1910 president Porfirio Díaz inaugurated on the grounds of the hacienda *La Castañeda* the Manicomio General, which provided services to individuals with mental disorders (INEGI, 2004). It was not until 1944 when the *Ley del Seguro Social* mandated protection of the livelihood of those workers who could be injured in the work and that acquire a disability (INEGI, 2004).

Medical rehabilitation in Mexico increased during the years of the polio outbreak affecting children. INEGI (2004) states that the *Centro Nacional de Rehabilitación Francisco Miranda* was established in 1950 to provide services to individuals with polio. In 1951, the *Hospital Infantil* began to train physical therapists and doctors which were the first to conduct research in rehabilitation (INEGI, 2004). Later in 1952, the *Centro de Rehabilitación #5* was created which later turned in into the *Centro de Rehabilitación del Sistema Musculo Esquelético*. This center was later named by order of the president as the *Instituto Nacional de Medicina y Rehabilitación* (Soberon, Kumate, & Laguna, 1988).

The fifties brought out an important social and civil mobilization to promote the development of people with disabilities in Mexico. Momentum of this movement increased drastically during this time frame. The leaders of this movement expanded from religious institutions to include parents, teachers, doctors, therapists, and psychologists. Most of the achievements were seen throughout the 80s and 90s. At the same time, several private institutions created a social network whose presence has been strengthened through the years (Fuentes, 1998).

In 1977 the *Sistema Nacional para el Desarrollo Integral de la Familia (DIF)* [National System for Integral Development of the Family] was created with the purpose of providing assistance as an obligation of the states and in benefit of the marginalized population, the disabled or people with some type of social disadvantage (Fuentes, 1998). DIF established a rehabilitation program which covered activities related to neuromuscular impairments, communication, blindness, as well as mental health (Fuentes, 1998). In January 1986 the *Ley sobre el Sistema Nacional de Asistencia Social* [Law on the National Social Assistance] was promulgated which established that individuals not only individuals with mental illness could be eligible to receive social care services but those with blindness, low vision, deafness, speech impairments, neuromuscular system disorders, mental impairments, and other deficiencies would be included in the legislation (INEGI, 2004). Furthermore in 1988-1994 DIF developed the *Programa de Asistencia a Minusválidos* [Program to Assist the Disabled] which had the objective of providing non-hospital rehabilitation services to individuals with disabilities that due

to marginalization are not able to receive services elsewhere. This program tried to integrate them into their own family as well as to the rest of society (DIF, 1994).

During the eighties and early nineties, significant progress was made in the regulatory framework in terms of attention and recognition of the rights of people with disabilities in Mexico, which included modifications to the *Ley General de Salud* [General Health Law] for people with disabilities of 1984 (INEGI, 2001). Despite efforts to address disability issues and provide quality services to this population, the federal government began to take more control during the presidential years of Ernesto Zedillo; 1994-2000 (CONADIS, 2010a). During these years the *Oficina de Representación para la Promoción e Integración Social de las Personas con Discapacidad* [Office for the Promotion and Social Integration of People with Disabilities] was created with the main purpose of planning, coordinating, supporting and promotion of information about this population. It is also in charge of interacting with other organizations of society to accomplish the well-being of people with disabilities nationally (ORPISPCD, 2000). Also with the help of this office, individuals with disabilities created the Accessibility Plan along with other non-governmental organizations with the objective of eliminating physical, architectural, urban, transportation and communication barriers to ensure free access and use of every space without any barrier (ORPISPCD, 2000).

In February 1995 the *Comisión Nacional Coordinadora para el Bienestar y la Incorporación al Desarrollo de las Personas con Discapacidad* (CONVIVE) [National Coordination Commission for the Welfare of People with Disabilities] was created and designed an action plan to orient any project in favor of this part of the protected population. Its main objective was to

Promote the development and integration of people with some type of disability, ensuring a full respect and use of human, political and social rights; equal opportunities, fair access to health services, education, training, job, culture, recreation, sports, and infrastructure, as well as everything that contributes to the well-being and improvement of the individual's quality of life. It spread a culture of integration based on respect and dignity considering

that any participation of someone with a disability enriches society and strengthens the values of family unity (Fuentes, 1998, p.715).

Eight subprograms were established to ensure that the objectives of the program were followed: Health, Welfare and Social Security Program; Education Program; Training and Employment Program; Recreation and Sports Program; Accessibility Program; Telecommunications and Transportation Program; Legislation and Human Rights Program; and the National Program for Information about the Population with Disability (CONVIVE, 1999).

México in the 21st century

Despite long history and all the efforts to help people with disabilities, it was not until the presidential years of Vicente Fox, 2000-2006, when the Mexican Federal Government took the initiative to create legislation to protect the rights of individuals with disabilities. To ensure the drafted legislation would be followed, on June 10, 2005 the Mexican Federal Government signed into law the *Ley General para las Personas con Discapacidad* [General Law for People with Disabilities] was signed by president Vicente Fox (CONADIS, 2010a; Olguin, 2006) with the purpose of promoting the development of different programs to assist people with disabilities, reduce any barriers and enforce the law that protects their rights and responsibilities of citizens of Mexico (CONADIS, 2010a). The *Consejo Nacional para las Personas con Discapacidades* (CONADIS) [National Council for People with Disabilities] was created after the law was passed, making it in charge of promoting, guiding and monitoring the institutional programs in charge of the departments and agencies from the Federal Public Administration to make efforts and activities toward the attention and resolution of problems and necessities of people with disabilities (ORPISPCD, 2002). This is a governmental institution is under the *Secretaría de Salud* which is currently serving as the main organization to promote the full integration of people with disabilities into society. In May 30, 2011, president Felipe Calderon signed into law the *Ley General para la Inclusión de las Personas con Discapacidad* (LGIPD) [General Law for the Inclusion of Persons with Disabilities] (CONADIS, 2011). This new law mandates the state to promote, protect, and guarantee the use of all human rights and liberties of people with

disabilities, ensuring the full inclusion into society with respect, equality, and equal opportunities (CONADIS, 2011).

United States in the 1800s

Throughout the 1800s people with disabilities were feared by other people and it was thought that they were not able to contribute to society aside from them being used as entertainment in public events (Anti-Defamation League (ADA), 2005). People with disabilities were seen as inferior, possessed, and sick individuals who were expected to remain separate from the “normal” people. Thus, they were sometimes forced to undergo mandatory sterilization and often placed in institutions in an attempt to prevent the spread of disabilities, (ADL, 2005). By excluding people with disabilities from the rest of society, the general population thought there was something extremely wrong with people with disabilities causing them to be placed in an institution and they needed to be cured (DLC, 2010). This practice created amongst the general population a greater fear of being in contact with people with disabilities and when someone did encounter an individual with a disability there was confusion on how to engage with them or simply how to approach them (DLC, 2010). All of these behaviors only resulted in marginalization, stigmatization and the creation of biased assumptions (ADL, 2005).

United States in the early1900s

During WWI and in the middle of the 20th century thousands of soldiers began to return to the United States after acquiring a disability during the war. As a result of this, they expected to receive assistance from the federal government as a way to pay them back because of their service in the war (ADL, 2005). President Franklin Delano Roosevelt advocated for the rehabilitation of people with disabilities. Despite having a disability, he still thought that having a disability was not normal, and should be seen as a medical condition that had to be treated and if possible cured (ADL, 2005). The pressure towards the government from disabled veterans persisted through WW II to receive rehabilitation and vocational training as payment for their services during the war. Regardless of the increased efforts to gain independence and receive equal treatment, they were still not able to access transportation, bathrooms, stores, buildings

were not accessible for them to look for a job and have a job which only prevented them from the opportunity of having a satisfying job (ADL, 2005).

United States in the late 1900s

Around the 1970s people with disabilities stepped forward to demand the government for equal rights. A group of individuals with disabilities marched in Washington D.C. to demand this right. At that time President Nixon vetoed the Rehabilitation Act of 1972 (Disability Law Center, 2010). The following year the act was passed and for the first time in U.S. history the civil rights of people with disabilities were protected by law (Disability Law Center, 2010). Later, the Education for All Handicapped Children Act of 1975 (PL 94-142) was passed and later in 1990 was renamed to Individuals with Disabilities Act (IDEA) (ADL, 2005). This law demanded public education to be free and appropriate to every child with a disability in the least restrictive environment (Disability Law Center, 2010).

Even with these mayor changes to education and rehabilitation there remained a lot of work to be done to protect individuals with disabilities and remove discrimination. In 1990 the Americans with Disabilities Act (ADA) was passed being the first federal antidiscrimination law that ensured the equal access to employment, public accommodations, the full participation and integration to society of people with disabilities (Disability Law Center, 2010). The enactment of the ADA was a big change in favor of many people with disabilities who had experienced discrimination. However societal views of people with disabilities did not change automatically, this would take time.

United States in 21st century

It has been twenty years since the ADA (1990) was passed and there is still a lot to be done. Slowly public buildings, schools, buses, houses, etc. have been modified so that individuals with disabilities can easily access them. Buildings constructed after the ADA was passed should comply with the regulations established under the law. Due to the changes in physical access

more people with disabilities are able to get involved in activities they could not in the past because of the inaccessibility.

More students with disabilities now are able to access school buildings and programs, therefore are better able to receive education. As a result of the accessibility in buildings, people and children are more aware of disability issues leading to more respect and equal treatment towards this part of society (Lafee, 2011).

Content of the Disability Laws

Following is a brief outline of the titles under the LGIPD (2011) most recent law Mexico adopted to protect the rights of people with disabilities. This law contains similar titles and information as the LGDP with the main difference that new information was added to the LGIPD making each article more specific. It is then compared to the ADA (1990) being the law that protects people with disabilities in the United States and a brief description of each title.

Ley General para la Inclusión de las Personas con Discapacidad of 2011

This law is composed of four titles, each title is then divided into chapters and under each chapter there are various articles describing the rights covered by this law. Title I is composed of one chapter that covers general provisions. Title II Rights for People with Disabilities is further divided into twelve chapters. Chapter I under title II refers to health and social care and is enforced by the *Secretaría de Salud* [Ministry of Health]; chapter II discusses Work and Employment covered by the *Secretaría del Trabajo y Previsión Social* [Ministry of Labor and Social Prevision]; chapter III relates to education being the *Secretaría de Educación Pública* [Ministry of Public Education] the agency enforcing this chapter; chapter IV covers accessibility and housing regulated by agencies of the federal public administration, states and municipalities; chapter V relates to public transportation and communications and the organization in charge of regulating it is the *Secretaría de Comunicaciones y Transportes* [Ministry of Communication and Transportation]; chapter VI is related to social development being enforced by the *Secretaría de Desarrollo Social* [Ministry of Social Development]; chapter VII talks about the collection of

data and statistics and the *Instituto Nacional de Estadística y Geografía* [National Institute of Statistics and Geography] will be responsible for this part of the law; chapter VII covers recreation, culture, tourism and sports being enforced by the *Comisión Nacional de Cultura Física y Deporte* [National Commission of Physical Culture and Sport]; chapter IX access to justice being the federal government and each state the ones in charge of enforcing this chapter; chapter X states the liberty of expression, opinion and access to information; chapter XI relates to the guidelines of the national program for the development and inclusion of people with disabilities being enforced by the federal government, states and municipalities; chapter XII covers the national system for the development and inclusion of people with disabilities.

Title III states the National Council for the Development and Inclusion of People with Disabilities and is divided into six chapters. Chapter I discusses the creation of the National Council for the Development and Inclusion of People with Disabilities; chapter II covers the responsibilities of this new council; chapter III mentions how this council will be administrated and integrated; chapter IV details how the assembly of the council will analyze and propose programs and actions that will ensure the fulfillment of the proposed programs; chapter V covers the organism that will monitor the law; chapter VI states the relationship between the council and the employees and the rules of employment between them.

Title IV consists of one title where sanctions and responsibilities in case of the violation of the law. The last part of the law includes seven transitory points including where the law will be published, when will it be effective, etc.

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is the United States first law that protected the rights of people with disabilities. This law is composed of five titles each describing specifically the elements covered under them. Also, each title is enforced by a specific entity that is responsible for monitoring the proper establishment of what the ADA covers.

Title I of the ADA states employers should not discriminate against qualified individuals with disabilities and employers are required to make reasonable accommodations for employees with disabilities. An individual with a disability is someone whose physical or mental impairment impairs one or more major life activities. A qualified individual is someone who has the skills, experience, education, and meets other job requirements and who is able to perform the essential functions of the job. Reasonable accommodations are adjustments or modifications to the job that would enable the individual to perform the job. Any accommodation should not cause undue hardship to the employer, meaning that they should not be overly costly (Bruyere, Jenkins, Patterson & Symnanski, 2012).

Title II of the ADA establishes that state and local governments are required to provide equal opportunity for people with disabilities to benefit from public education, transportation, recreation, social services, etc. Under this title, public buildings and public transportation should be accessible for all individuals with disabilities. Title III protects people with disabilities from being discriminated in the opportunity to enjoy goods, services, accommodations from the access to any public building however, private buildings and churches are excluded. Title IV provides individuals with speech and hearing impairments to have access to telecommunication services. Public service announcements that are federally funded must contain closed captions. Title V mentions miscellaneous provisions including guidelines for historical sites so that people with disabilities can access them. The Senate and Congress are covered under this title. It also provides a mechanism for providing legal fees for successful litigation under this law (Bruyere, Jenkins, Patterson & Symnanski, 2012).

As mentioned in the ADA, there are specific architectural standards that state and government buildings need to follow in order to be accessible to individuals with disabilities. Any building that is currently inaccessible must be relocated or otherwise be modified to be accessible for individuals with disabilities to be able to access any services being provided in those buildings. Any modifications done to these buildings should not cause financial or administrative burden (ADA, 1990).

Comparison

There exist similarities between the two pieces of major disability legislation *Ley General para la Inclusión de las Personas con Discapacidad* and the Americans with Disabilities Act. They were both landmark legislation geared toward protecting the rights of people with disabilities through a variety of chapters or titles. They both are written to include all people with disabilities as opposed to the earlier legislation focusing on mental illness.

The first difference is the method in which they were developed. In Mexico the law stemmed from the government activities while in the United States it was people with disabilities who advocated for the passage of the legislation. The dates in which they were signed into law are also different. The American with Disabilities Act was signed in 1990 while the *Ley General para la Inclusión de las Personas con Discapacidad* (LGIPD) was signed twenty one years later in 2011. The LGIPD contains more detailed information than the LGDP which was signed in 2005. Both of these laws are divided the same way and cover the same provisions but the main difference is that the Mexican law specifies the entities that will enforce each chapter under the particular title.

Another major difference is in the enforcement of the laws. In Mexico the National Council for the Development and Inclusion of People with disabilities will be the main entity in charge of monitoring the law and making sure it is followed as established. This law is part of CONADIS which this is under the *Secretaría de Salud* [Ministry of Health] which was created prior to the signing of the law. In the United States, responsibility falls on different entities depending on which title was violated. Violations of Title 1 Employment are referred to the Equal Employment Opportunity Commission. Title II Public Transportation violations are referred to Federal Transit Administration's Office of Civil Rights. Title III Public Accommodations complaints are filed with the Disability Rights Section of the Civil Rights Division of the Department of Justice. Title IV Telecommunications issues are filed with the Federal Communications Commission. And Title V Miscellaneous Provisions prevents threatening or retaliation of individuals who file claims with the various departments to enforce the ADA. It also is a mechanism to recover legal fees.

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